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Supreme Court, U. S.
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Supreme Court of the United States

October Term, 1974

No. 74-560

Armando Rendon, *Petitioner,*

v.

District of Columbia Board of Elections, *Respondent.*

No.

Carleen Joyce, *Petitioner,*

v.

District of Columbia Board of Elections, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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INDEX AND TABLE OF CASES AND STATUTES CITED

Page

JURISDICTIONAL STATEMENT 2

QUESTION PRESENTED 2

CONSTITUTION, STATUTES AND REGULATIONS 2

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 4

I. The Decision Below is Erroneous Under Earlier Decision of this Court as Petitioners are Denied Reasonable Access to Primary and General Election Ballots 4

a. The Available "Pool" From Which Signatures May Be Obtained is Not Large Enough to Sustain the 250 Signature Requirement 5

b. The Decision Below Deprives the Petitioners of Their Equal Protection Rights 7

c. The Decision Below is Erroneous Under Prior Decisions of This Court Since It Did Not Even Suggest a "Compelling State Purpose" Served by the Subject Signature Requirement 8

II. The Court Below Has Decided a Federal Question Not Heretofore Determined by This Court 10

CONCLUSION 11

CASES:

American Party of Texas v. *White*, 39 L. Ed. 2d 744, (1974) 8, 10

Dunn v. *Blumstein*, 405 U.S. 330 (1972) 9, 10

Harper v. *Virginia Board of Elections*, 383 U.S. 663 (1966) 10

Page

Jenness v. *Fortson*, 403 U.S. 431 (1971) 8
Kramer v. *Union Free School District No. 15*, 395 U.S. 621 (1969) 9
Kusper v. *Pontikes*, 414 U.S. 51 (1973) 9
N.A.A.C.P. v. *Alabama*, 357 U.S. 449 (1958) 11
Sherbert v. *Verner*, 374 U.S. 398 (1963) 9
Socialist Labor Party v. *Gilligan*, 406 U.S. 583 (1972) . . 6, 7
Storer v. *Brown*, 39 L. Ed. 2d 714 (1974) 6
Williams v. *Rhodes*, 393 U.S. 23 (1968) 7, 8, 9, 10

STATUTES:

D.C. Code, 1973. Sec. 1-1108(i)(1) 9
Sec. 1-1108(i)(2)(B) 2, 3, 4, 7
Sec. 1-1108(k)(1) 4
Sec. 11-102 2

D.C. Rules and Regulations.
Title 22, Sec. 4.2(b)(6) and k(3) . . . 8, 9
Title 22, Sec. 4.2(a)(2) amended June 3, 1974 11

28 U.S. Code, Sec. 1257(3) 2

MISCELLANEOUS:

Wayne Law Review. Vol. 17, p. 1543, 1971 10

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District of Columbia Board of Elections, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Armando Rendon and Carleen Joyce, petitioners herein, respectfully petition this Court for a writ of certiorari to review the judgments of the District of Columbia Court of Appeals in their respective cases, which were consolidated by the Court below for all purposes, and decided in a single opinion.

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals (App. A, *infra.*) is unreported. The opinion of the District of Columbia Board of Elections (App. B, *infra.*) is unreported.

JURISDICTION

The judgment of the District of Columbia Court of Appeals in both cases was entered on August 12, 1974. The jurisdiction of this Court is invoked pursuant to 28 U.S.C., Sec. 1257(3) and D.C. Code, 1973, Sec. 11-102.

QUESTION PRESENTED

Whether D.C. Code, 1973, Sec. 1-1108(i)(2)(B) violates the petitioners' First Amendment free speech and association rights and their Fifth Amendment equal protection rights by denying them access to the primary election ballot and, consequently, to the general election ballot without sufficient cause.

CONSTITUTION, STATUTES AND REGULATIONS

(These are presented in Appendix D.)

STATEMENT OF THE CASE

The petitioners, Armando Rendon and Carleen Joyce, filed timely nominating petitions on July 12, 1974, as candidates for D.C. Statehood Party primary elections scheduled to be held on September 10, 1974 in the District of Columbia. Armando Rendon filed a petition containing 247 unchallenged signatures for Ward One and Carleen Joyce filed a petition containing 166 unchallenged signatures for Ward Three. The District of Columbia election law requires candidates for ward primary elections to obtain 250 signatures on petitions from registered voters in their party. The D.C. Board of Elections challenged said petitions and on July 26, 1974, the Board passed a consolidated Order disqualifying the petitions.

The record shows that the D.C. Statehood Party is a "qual-

ified party" under the Election Law by virtue of the fact that one of its candidates for office obtained more than 7,500 votes in the last general election. Therefore, the only method whereby the D.C. Statehood Party may run a candidate for office under the party's name is by winning a primary election. The D.C. Statehood Party is not allowed to select its candidates by the convention method. *If a candidate for a qualified party does not win a primary, he or she may not be placed on the general election ballot as a designated party representative by any means.*

The D.C. Statehood Party, although it is qualified under the election law, does not have 250 registrants in seven of the eight wards in the city. Hence, this party will not be able to hold a primary for the ward posts in seven of the eight wards; consequently, no party representatives can be named on the general election ballot in seven of eight wards.*

A timely Petition for Review was filed by petitioners in the Court of Appeals for the District of Columbia on July 29, 1974. The Court of Appeals upheld the Board's decision by a judgment dated August 12, 1974.

The issues herein presented were first articulated before the Board of Elections as noted in its order (App. B, p. iii) and later in the Petition for Review filed in the Court of Appeals for the District of Columbia on July 29, 1974 (App. C, p. viii) and in the Petitioner's Brief (which was incorporated into the foregoing Petition). The "question presented below" was "Whether D.C. Code, 1973, Sec. 1-1108(i)(2)(B) violates the petitioners' First Amendment equal protection rights by denying them access to the primary election ballot and, consequently, to the general election ballot without sufficient cause."

The Board of Elections and the Court of Appeals both denied the petitioners' claims: they held that the subject statute was reasonable as applied. (App. B and A)

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* Also, attached hereto as Appendix E is a breakdown of the registration statistics in the city, with percentage calculations therefore, for May 23, 1974, the day the candidates for office could begin their petition drives.

REASONS FOR GRANTING THE WRIT

It is respectfully submitted that certiorari should be granted in the present case because the decision below is in direct conflict with earlier decisions of this Court and because the court below has decided a federal question of substance not heretofore finally determined by this Court.

I. The Decision Below Is Erroneous Under Earlier Decision Of This Court As Petitioners Are Denied Reasonable Access To Primary And General Election Ballots.

The D.C. Code, 1973, Sec. 1-1108(i)(2)(B) denies D.C. Statehood Party (DCSTP) candidates their right to participate in primary elections by establishing unreasonable and arbitrary requirements for primary ballot status. Said statute is unconstitutional as it denies potential nominees' rights guaranteed to them by the First Amendment (Speech and Assembly), the Fifth Amendment (Due Process and, by interpretation, Equal Protection), and the Ninth Amendment (general rights as citizens).

Specifically, the DCSTP candidates' right to participate in the primary is abridged by the provision contained in the D.C. Code, 1973, 1-1108(i)(2)(B) which requires that a "qualified party" candidate in the primary obtain a petition containing two hundred and fifty signatures from individuals registered in his or her party in the ward.* In fact and theory, the signature requirement denies Statehood Party candidates access to the primary ballot because it requires a primary candidate to obtain between seventy and several hundred percent of the signatures of party registrants in the various wards. *Furthermore, if the Party candidate is not on the primary ballot, he or she cannot be placed on the general election ballot by party designation.* D.C. Code, 1973, 1-1108(i)(2)(B) and (k)(1).**

* In the next preceding election, i.e. 1972, the Statehood Party candidate, Charles Cassell, obtained more than the seven thousand five hundred votes needed to require the Party to select its candidates by the primary method.

** The DCSTP is "tied into" the primary method for the election of individual nominees and for the development of a "slate" of candidates both by law and by regulation.

The two hundred and fifty signatures of party registrants requirement for ballot status operates to exclude partisans of the Statehood faction from the primary and general election ballots. According to Board of Election Supervisors' figures the DCSTP has registration in the eight wards as shown below:

Ward	Number of DCSTP Registrants	
	May 20, 1974	July 22, 1974
1	225	371
2	205	229
3	142	149
4	125	131
5	93	102
6	171	193
7	71	80
8	97	109
Total Citywide	1129	1364

It is evident from the foregoing chart that in seven wards no DCSTP member could gain sufficient valid signatures to be placed on the ballot. Even in a ward with two hundred and fifty DCSTP registrants, each registrant would have to sign *two* petitions to enable two candidates to be named on the ballot; this is obviously a political impossibility and further undermines the reason for a primary and the statute's reasonableness. Also, even the candidate who could obtain ballot status from Ward One would be required to obtain 70% of the party's registrants in that ward. The total effect is to exclude DCSTP candidates from primary ballots and, since they cannot be nominated, they are precluded from being named on the general election ballot by party designation.

a. The Available "Pool" From Which Signatures May Be Obtained is Not Large Enough to Sustain the 250 Signature Requirement.

On its face the statute does not necessarily appear to establish an unreasonable or impracticable undertaking for prospective

candidates. However, as suggested above, the available pool of registrants in question is not large enough to sustain the 250 signature requirement. The decision below is contrary to this Court's decision in *Storer* v. *Brown, supra.* at 39 L. Ed. 2d 714 at 728 and 729 where the Court stated:

> "On its face, the statute would not appear to require an impractical undertaking for one who desires to be a candidate for President. But it is a substantial requirement; *and if the additional likelihood is as it seems to us to be, that the total signatures required will amount to a substantially higher percentage of the available pool than the 5% stipulated in the statute, the constitutional claim asserted by Hall is not frivolous.* Before the claim is finally dismissed, it should be determined whether the available pool is so diminished in size by the disqualification of those who voted in the primary that the 325,000-signature requirement, to be satisfied in 24 days, is too great a burden on the independent candidate for the office of President." (Emphasis applied)

Under *Storer* v. *Brown*, 39 L. Ed. 2d 714, at 728 and 729 it is fair to assume that it is reasonable to require petitioners to obtain five percent of his or her party's registrants' signatures on a petition, a figure which is on the outer fringe of reasonableness. However, if this were the case then the Statehood Party would have to have 5000 registrants in any given ward. (The pool would be 5000–5% of 5000 equals 250.)* See also *Socialist*

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* Actually the 5000 registrants, in reality, is low. Over time people move in and out of wards so a party would have to have, over time, registered many more people than 5000 to have that pool available at election time. Furthermore, if the party were to have four candidates the pool would have to be enlarged by perhaps as many as an additional 750 persons since registrants are, in real political life, not likely to sign more than one nominating petition–each person will have his or her own favorite candidate. Therefore, all things considered, the true figure for the proper base of 5% would probably be closer to 8000 or 9000 registrants to assure a large enough pool. This would mean that the Party would have to have in reality forty percent of the registrants in, for example, Ward 8 to have a reasonable chance of getting on the ballot. Even the 5000 base figure would constitute approximately 25% of the total registrants for all parties in Ward 8. (See App. E)

Labor Party v. *Gilligan*, 406 U.S. 583 (1972) which invalidated a 7% signature requirement. Therefore, the DCSTP would have to be a "large" party in terms of registrants, *regardless of demonstrated voter support*, to obtain ballot status.

The obvious practical effect of the 250 signature requirement is to make it exceedingly difficult for the Ward One candidate, Mr. Rendon, to succeed and impossible for any other ward candidate to succeed. Since there is no other avenue for a "qualified party" to be placed on the primary ballot for ward elections (and as a result thereof impossible for the candidates to be named as party representatives on the general ballot) and since the Party has a right to qualify by some reasonable means, the exclusion of the DCSTP ward candidates from the primary ballot by the 250 signature requirement is patently unconstitutional under prior decisions of this Court.

b. The Decision Below Deprives the Petitioners of Their Equal Protection Rights.

The court below refused to follow the equal protection rule established by this Court in *Williams* v. *Rhodes*, 393 U.S. 23 (1968). The petitioners contended that D.C. Code, 1973, Sec. 1-1108(i)(2)(B) places the DCSTP candidates in a disadvantaged position vis a vis Republicans and Democrats as well as small "unqualified parties" in obtaining ballot status in the primary and, hence, the general election. The Court below did not consider the factual context of the case at bar nor the proper application of the law laid down by this Court to said facts.

The D.C. Election Law requires each prospective nominee to obtain a total of 250 signatures from his or her party registration. As of May 23, 1974, the date the petition drives could open, the range of effort in the wards for Democrats to get 250 signatures was 0.81% to 1.31% and for the DCSTP 111% to 351%; this is "gross discrimination." Also see percentage figures in Appendix E. The practical effect of the law is to force the DCSTP candidate to search every nook and cranny for voters registered in the party and to receive their virtually unani-

mous approval once they are located. The Democrat only has to obtain a minor portion of his party's signatures. It has been said that "Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike, a truism well illustrated in *Williams* v. *Rhodes, supra.*," (393 U.S. 23) *Jenness* v. *Forston*, 403 U.S. 431, 441-442; *American Party of Texas* v. *White*, 39 L. Ed. 2d 744, at 760. Treating a small party the same as a large one creates such a "gross discrimination" in the instant case just as it did in *Williams* v. *Rhodes, supra.* Of course, the Ohio law considered in *Williams* v. *Rhodes, supra.* on its face treated all parties alike, just as the statute here involved does. However, in both cases the factual analysis necessarily leads to the conclusion that the "qualified" but small party is at a severe disadvantage when compared to the larger ones. In the instant case the DCSTP is actually denied all means of ballot access and, as a consequence of not being allowed on the general election ballot, while the large party candidates can be so named.

The lack of equality exists also between the DCSTP and small "unqualified" parties. A party *smaller* than the DCSTP would be allowed to have a convention and select nominees, and then run them as a slate in the general election after having only obtained *500 signatures from all registered voters in their wards.* (Regs. Title 22, Sec. 4.2b(6) and k(3).) The DCSTP candidates cannot even use this method for ballot access. The decision below is erroneous under prior decisions of this Court as it permits the denial of the petitioners' equal protection rights.

c. The Decision Below is Erroneous Under Prior Decision of This Court Since It Did Not Even Suggest a "Compelling State Purpose" Served by the Subject Signature Requirement.

The Code provisions here involved create exclusionary voting conditions and substantial burdens on the right to vote or to associate for political purposes. The Code provisions also adversely impact on petitioners' equal protection rights. In such a case this Court has held that question is to determine whether

the state has "failed to show any compelling interest which justifies imposing . . . heavy burdens on the right to vote and to associate," as it must. *Williams* v. *Rhodes*, 393 U.S. at 31; *Kramer* v. *Union Free School District No. 15*, 395 U.S. 621 (1969); *Dunn* v. *Blumstein*, 405 U.S. 330 (1972); and *Kusper* v. *Pontikes*, 414 U.S. 51 (1973). No valid governmental purpose is served by the 250-signature requirement.

The asserted governmental objective in this case is that a candidate "demonstrate, as a condition precedent to participation in a primary election, the prescribed minimal community support in the ward of the city from which he seeks election." (App. A, p. i) This Court has held that such an objective be such that "no alternative forms of regulation would combat such abuses without infringing First Amendment rights." *Sherbert* v. *Verner*, 374 U.S. 398 at 407 (1963). The asserted objective can be more narrowly achieved.

Candidates for at-large positions need only to obtain the lesser of one percent of the signatures in his or her party or 2000 signatures. D.C. Code, 1973, 1-1108(i)(1). The DCSTP at-large candidates required only eleven signatures for ballot status (Opinion, No. 6). What is statutorially reasonable for at-large candidates must also be reasonable for ward candidates. Actually, the restrictions on ward hopefuls should be less onerous than those for at-large positions considering the relative importance of the offices involved. This, taken in conjunction with the fact that a large number of states require signatures amounting to only one percent of the electorate (*Williams* v. *Rhodes*, 393 U.S. at 33) operates to show the lack of government need for the subject requirement.

The subject signature requirement is also unnecessary since parties smaller than the DCSTP may attain ballot status for their candidates, and have them indicated as such on the ballot, after having attained signatures from less than 3% of a pool of voters while the DCSTP has no similar access to the ballot (Reg. Title 22, Sec. 4.2b(6) and k(3)). If it is reasonable for a small "unqualified party" to attain general election ballot status

for its candidates without any great effort, it is unreasonable to *absolutely* exclude certain DCSTP candidates from the same ballot.

Finally, the test for primary or general election ballot status must rest upon voter support rather than party registration in the District of Columbia. Votes received in prior elections is the real indicia of support rather than voter registration. The DCSTP has the demonstrated voter support which entitles it to ballot status according to the logic of *Williams* v. *Rhodes, supra.; Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966); *Dunn* v. *Blumstein*, 405 U.S. 330 (1972). Furthermore, considering the facts that the DCSTP is a local party and that voters may desire to vote in national primaries, it is unreasonable to tie ballot status to registration figures in the local wards.

II. The Court Below Has Decided a Federal Question Not Heretofore Determined by This Court

In the proceedings below the petitioners asserted that the D.C. Election Law denied DCSTP candidates their right to freely associate with members of their party. They claimed that as members of the DCSTP they had a right to associate with other candidates (i.e. the ones who are on the primary ballot and who will be on the general ballot for at-large offices) and others and to present a "slate" to the electorate. The asserted right is one that two members of this Court, Justices Harlan and Douglas in *Williams* v. *Rhodes, supra.*, suggested may exist. (See Wayne Law Rev. Vol. 17, p. 1543, 1971; see also *American Party of Texas* v. *White*, 39 L. Ed. 2nd at 759-760.)

The District of Columbia Court of Appeals refused to recognize the important right of political association as it stated: "a candidate for the office of member of the Council may obtain a place on the general election ballot by filing a nominating petition signed by five hundred duly registered voters regardless of party in the ward from which he seeks election." (App. A, p. ii) It is clear that if the petitioners took this route to the ballot that they could not be named on the ballot by party affiliation

(D.C. Rules and Regulations, Title 22, Sec. 4.2(a)(2)(App. D(2) p. XIV)); the petitioners pointed this fact out to the court below in its brief on the merits.

The argument for the existence of the asserted right to political association follows: There exists a combination of constitutional rights–free speech and assembly–which is directed at effective expression of points of view. Free speech safeguards pure expression of ideas while free association insures that a group can effectively advocate, advance and implement those ideas. As noted by Justice Harlan in *N.A.A.C.P.* v. *Alabama*, 357 U.S.449, at 460 (1958):

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the nexus between freedom of speech and assembly."

In the factual context outlined above it is clear that the DCSTP will be unable to present a complete and unified slate of candidates to the electorate. They will be unable to have ward nominees and, as the case now stands, the petitioners will be unable to be on the general election ballot representing their party. Hence, the DCSTP will not be afforded the opportunity to expound and implement its views, through its candidates. The constitutionally protected right of association–the DCSTP's right to develop as a political entity–will have fallen into snarls of a perverse law which recognizes them as a "significant party" and requires them to have primaries on one hand, and then effectively denies them the right to have a primary in the wards on the other.

CONCLUSION

This Court should grant a writ of certiorari.

Respectfully Submitted

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INDEX OF APPENDICES

		Page
A.	D.C. COURT OF APPEALS DECISION	i,ii
B.	BOARD'S DECISION	iii-vii
C.	PETITION	viii-xi
D.	(1) Copies of Relevant Portions of D.C. Election Law	xii
	(2) Rules and Regulations Cited	xiii,xiv
	(3) First Amendment, Fifth Amendment, Ninth Amendment	xv
E.	CHART	xvi

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 8705 January Term, 1974

Armando Rendon
and
Carleen Joyce, Petitioners,

v.

District of Columbia Board of Elections,

Respondent.

Petition for Review of an Order of the
District of Columbia Board of Elections

BEFORE: Kern, Associate Judge, and Pair, Associate Judge, Retired.

J U D G M E N T

Petitioners challenge respondent's refusal to accord them ballot status in the forthcoming District of Columbia primary election. They contend, citing Williams v. Rhodes, 393 U.S. 23 (1968), among others, that the statutory provision pursuant to which the Board acted, D.C. Code 1973, Section 1-1108(i)(2), violates the First Amendment and their right to equal protection. Specifically, petitioners attack the statutory requirement that each candidate of their party, the D.C. Statehood Party, for the Council (other than the Chairman and at-large members) must obtain on a nominating petition 250 signatures from residents registered with that party in the candidate's particular ward and argue that such requirement is arbitrary and unreasonable.

After examination of the statute and its legislative history and upon consideration of the briefs and authorities cited therein we are unable

]CASES CONTINUED[

to conclude that the Congress acted improperly in requiring candidates for the office of member of the Council to demonstrate, as a condition precedent to participation in a primary election, the prescribed minimal community support in the ward of the city from which he seeks election.[1] See Moore v. Board of Elections for the District of Columbia, 319 F. Supp. 437, 441 (D.D.C. 1970). See also Jenness v. Forston, 403 U.S. 431 (1971); American Party of Texas v. White, ___U.S.___(1974). The legislation challenged here is a far-cry from the statutes invalidated in Rhodes, which Mr. Justice Douglas, concurring at 13, characterized as "an entangling web of election laws...effectively foreclos(ing) its...ballot to all but Republicans and Democrats."[2]

Wherefore, the order of the Board is affirmed.

August 12, 1974. PER CURIAM.

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1 The D.C. Statehood Party accrued a sizeable enough vote in the general election of 1972 to qualify to hold primary elections for various offices, including the Council.

2 Under D.C. Code 1974 Supp. Sec. 1-1108(j)(1), a candidate for the office of member of the Council may obtain a place on the general election ballot by filing a nominating petition signed by five hundred duly registered voters regardless of party in the ward from which he seeks election.

BOARD OF ELECTIONS
DISTRICT OF COLUMBIA

IN THE MATTER OF
THE SUFFICIENT OF
THE NOMINATING PETITIONS
OF CARLEEN JOYCE AND
ARMANDO RENDON
TO QUALIFY FOR THE
STATEHOOD PARTY'S
PRIMARY ELECTION

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND OPINION

1. Carleen Joyce, seeking to qualify to run as a candidate in the D. C. Statehood Party's Ward 3 primary election to be held on September 10, 1974, filed with the Board of Elections on July 12, 1974, a nominating petition containing the signatures of 166 registered D. C. Statehood Party members residing in Ward 3.

2. Armando Rendon, seeking to qualify to run as a candidate in the D. C. Statehood Party's Ward 1 primary election to be held on September 10, 1974, filed with the Board of Elections on July 12, 1974, a nominating petition containing the signatures of 247 registered D. C. Statehood Party members residing in Ward 1.

3. In the 1972 general election, the D. C. Statehood Party's candidate for the office of Delegate to the United States House of Representatives, Charles Cassell, received 18,730 votes.

4. As of May 20, 1974, the date on which candidates in party primary elections could begin seeking signatures on nominating petitions, the records of the Board of Elections showed the following figures with regard to D. C. Statehood Party registration by ward:

Ward	Number of D. C. Statehood Party Registrants
1	225
2	205
3	142
4	125
5	93
6	171
7	71
8	97
Total City-wide	1129

5. As of July 22, 1974, the records of the Board of Elections showed the following figures with regard to D. C. Statehood Party registration by ward:

Ward	Number of D. C. Statehood Party Registrants*
1	371
2	229
3	149
4	131
5	102
6	193
7	80
8	109
Total City-wide	1364

* These figures are approximate only. Because party registrants are constantly moving into and out of wards, precisely accurate figures at any given point in time cannot be made available.

6. Applying the provisions of Section 8(i)(1) of the District of Columbia Election Act, the Board of Elections, on May 20, 1974, required that each person seeking to run in the D. C. Statehood Party's 1974 primary election for the office of Delegate, Mayor, Chairman of the District of Columbia Council, or for an at-large seat on the Council file a nominating petition containing at least eleven signatures of qualified electors registered as members of the D. C. Statehood Party.

7. Pursuant to a stipulation between the Board of Elections and Carleen Joyce and Armando Rendon, the February 4, 1974, letter from D. C. Statehood Party Executive Director Mike Lewis to the Board of Elections, and the March 4, 1974, letter of the Board of Elections in reply, were admitted into evidence and form part of the administrative record. It was also stipulated that the Board would receive in evidence the letter dated July 25, 1974, from the Executive Director of the D. C. Statehood Party relating to the nominating convention held on June 16 1974, by the D. C. Statehood Party and the results of that convention Also stipulated into evidence was the Board of Elections' printout showing for each ward the total number of persons registered as members of a political party or registered as independents as of May 20, 1974.

CONCLUSIONS OF LAW

1. Pursuant to the provisions of Section 8(h)(2) of the District of Columbia Election Act, the D. C. Statehood Party is qualified to hold primary elections to select party candidates for the offices of Dele-

gate, Mayor, Chairman of the Council and member of the Council in the 1974 general election.

2. Pursuant to the provisions of Section 8(i)(2) of the District of Columbia Election Act, each person seeking to run in a party primary election for a ward seat on the District of Columbia Council must first qualify to run in such primary election by filing a nominating petition containing the signatures of at least two hundred and fifty qualified electors residing in the ward from which such person seeks election, and who are registrants of the same political party. This is a mandatory requirement.

3. Neither the nominating petition filed by Carleen Joyce nor the nominating petition filed by Armando Rendon meets the 250 signature requirement of Section 8(i)(2) of the District of Columbia Election Act.

OPINION

The findings of facts and conclusions of law recited above are not disputed by either Carleen Joyce or Armando Rendon. Since there were no material issues of fact to be resolved, the parties agreed that it would not be necessary to hold a formal hearing. Thus, these cases, which the parties agreed to consolidate, were disposed of by stipulation. See D. C. Code, 1973, § 1-1509(a).

5

The Board of Elections interprets the District of Columbia Election Act to require that candidates who are registered members of a party qualified to hold a primary election must follow the nominating procedures outlined in Sections 8(i)(1) and (2) of the Act in order to appear on the ballot in that party's primary election. Carleen Joyce and Armando Rendon do not appear to dispute the Board's interpretation of the Act, but rather raise a question about the Act's constitutionality. The Board, of course, has no authority to rule that the District of Columbia Election Act or any part of it is unconstitutional.

Chairman

Member

Member

July 26, 1974

DISTRICT OF COLUMBIA COURT OF APPEALS

ARMANDO RENDON	:	
and	:	
CARLEEN JOYCE	:	
Petitioners	:	
vs.	:	No._____
DISTRICT OF COLUMBIA BOARD OF ELECTIONS 14th and E Streets, N.W. Washington, D.C. 20004	:	
Respondent	:	

PETITION FOR REVIEW OF BOARD OF ELECTIONS ORDER

1. This is a petition for review of the Order of the Board of Elections issued in the matter of the election ballot petitions of Armando Rendon and Carleen Joyce dated July 26, 1974 which denied the petitioners ballot status in the upcoming primary elections.

2. The petitioners are Armando Rendon and Carleen Joyce, primary election candidates for Wards One and Three, respectively, on the D.C. Statehood Party ticket. The respondent is the District of Columbia Board of Elections.

3. This case has not been before this Court previously. The Board of Elections did not conduct a hearing upon this matter upon agreement of the parties. The petitioners incorporate by reference the record below and thier brief lodged herewith.

4. This Court has jurisdiction to review the Board's Order under D. C. Code, 1973, Secs. 1-1108-p; 1-1510; and 11-722.

5. The Petitioners recognize that this case involves a constitutional question which could not properly be resolved by the Board below. However, the petitioners do contend that the Board should allow them to be placed upon the primary ballot for the following reasons:

a. D. C. Code, 1973, Sec. 1-1108 (i) (1) (B) violates the petitioners First Amendment free speech and association rights and their equal protection rights by denying them access to the primary election ballot and, consequently, to the general election ballot, without sufficient cause.

b. Said statute establishes unreasonable and arbitrary requirements for primary ballot status by requiring the petitioners, both D. C. Statehood Party members, to obtain 250 petition signatures from registrants of their party in each of their wards. The law requires Mr. Rendon to obtain signatures from 70% of his available pool and Ms. Joyce more than 100% of her available pool.

c. If the petitioners are not allowed on the primary ballot they will not be able to be placed on the general election ballot

by party affiliation.

d. It is significantly easier for larger party candidates to obtain ballot status for the primary and general elections than it is for the petitioners. Furthermore, it is easier for small parties which, unlike the D. C. Statehood Party, are not "qualified parties" under the election law to obtain ballot status in the general election.

e. There is no reasonable and necessary governmental need for the subject signature requirements. At large candidates can obtain ballot status for the Statehood Party by obtaining only eleven petition signatures and small party candidates can obtain ballot status by obtaining less than 3% of voter signatures in a given pool. In essence, the subject requirement unconstitutionally infringes upon the petitioners' rights. Williams v. Rhodes, 393 U.S. 23 (1968)

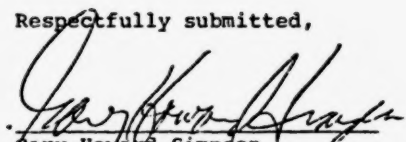
WHEREFORE, in consideration of the foregoing, Petitioners request:

(1) That this Court reverse the Order of the Board of Elections dated July 26, 1974 and enter an Order granting the petitioners the right to be placed upon the upcoming primary ballot.

(2) That this Court declare the subject portion of the D. C. Election Law unconstitutional.

(3) Grant such other and further relief as this Court deems appropriate.

Respectfully submitted,



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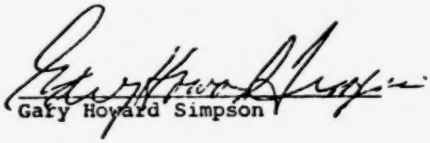
CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 1974, a copy of the foregoing Petition for Review as mailed, first class postage prepaid, to Leo N. Gorman, Assistant Corporation Counsel, District of Columbia Building, 14th and E Streets, N.W., Washington, D. C. 20004.



Gary Howard Simpson

NOMINATION AND ELECTION OF PARTY OFFICIALS AT LARGE AND BY WARD; OF PRESIDENTIAL ELECTORS, OF DELEGATE TO HOUSE OF REPRESENTATIVES, OF MAYOR, OF MEMBERS OF COUNCIL, AT LARGE AND BY WARD; OF MEMBERS OF BOARD OF EDUCATION, AT LARGE AND BY WARD; DESIGNATION, NOMINATION AND ELECTION OF LOCAL PARTY COMMITTEE OFFICIALS, AT LARGE AND BY WARD. CHALLENGES TO NOMINATING PETITIONS; DETERMINATIONS OF CHALLENGES; APPEALS. FILING DEADLINES.

Sec. 8. (D.C. Code, 1-1108).

(i) (1) Each individual in a primary election for candidate for the office of Delegate, Mayor, Chairman of the Council, or at-large member of the Council shall be nominated for any such office by a petition (A) filed with the Board no later than sixty days before the date of such primary election, and (B) signed by at least two thousand registered qualified electors of the same political party as the nominee, or by 1 per centum of the duly registered members of such political party, whichever is less, as shown by the records of the Board of Elections as of the one hundred fourteenth day before the date of such election.

(2) Each individual in a primary election for candidate for the office of member of the Council (other than the Chairman and at-large members) shall be nominated for such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two hundred and fifty persons in the ward from which such individual seeks election who are duly registered in such ward under section 7 of this Act, and who are of the same political party as the nominee.

(k) (1) In each general election for the office of member of the Council (other than the office of the Chairman or an at-large member) the Board shall arrange the ballots in each ward to enable a voter registered in that ward to vote for any one candidate who (A) has been duly elected by any political party in the next preceding primary election for such office from such ward, (B) has been duly nominated to fill a vacancy in such office in such ward pursuant to section 10 (d), or (C) has been nominated directly as a candidate for such office in such ward under subsection (j) of this section.

D.C. RULES AND REGULATIONS

Title 22

Sec. 4.2. Nominating petitions for general election.

(b) Six forms of nominating petitions. There shall be six forms of nominating petitions for direct nomination of qualified candidates for member of the Council:

(1) one for a person seeking direct nomination for Chairman of the Council as an independent candidate;

(2) one for a person seeking direct nomination for member of the Council at large as an independent candidate;

(3) one for a person seeking direct nomination for member of the Council from a ward as an independent candidate;

(4) one for a person seeking direct nomination for Chairman of the Council as a candidate affiliated with a political party;

(5) one for a person seeking direct nomination for member of the Council at large as a candidate affiliated with a political party; and

(6) one for a person seeking direct nomination for member of the Council from a ward as a candidate affiliated with a political party.

(k) Affidavit of candidate. Each nominating petition, when filed with the Board, shall be accompanied by an affidavit of the candidate attesting that:

(3) To the best of his knowledge and belief, the petitions being filed contain signatures of duly registered voters, equal in number to at least 1 1/2 per cent of the total number of registered voters of the District, as shown by the records of the Board as of 114 days before the date of such election, or by 3,000 persons duly registered under the Election Act, whichever is less; or, if the candidate is running from a ward, that the petitions being filed contain the signatures of 500 registered voters who are registered in the same ward as the nominee.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

BOARD OF ELECTIONS

DISTRICT BUILDING

WASHINGTON, D. C. 20004

CHAIRMAN
ROBERT E. MARTIN

MEMBERS
CLIFFORD J. CHAPMAN
WALTER POZEN

June 3, 1974

Persons seeking direct nomination as Independent candidates must be registered as Independent at the time they pick-up petitions.

"Sec. 2.2(a). 3.2(a), and 4.2(a) are each amended by adding the following new subsection:

"(2) No person who is registered as a member of a political party may seek direct nomination as an Independent candidate."

The Board finds that in order to insure an open electoral process in the forthcoming elections under P.L. 93-198, it is necessary to adopt the following new section of Chapter 13 of Title 22, D.C. Rules and Regulations to be effective immediately:

Sec. 13.10 Identification of Campaign Literature

All newspaper or magazine advertising, posters, circulars, billboards, handbills, bumper stickers, sample ballots, and other printed matter with reference to or intended for the support or defeat of a candidate or group of candidates for nomination or election to any public office shall be identified by the words "paid for by" followed by the name and address of the payer or the committee or other person and its treasurer on whose behalf the material appears.

Robert E. Martin
Chairman of the Board.

ARTICLES IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION

Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

PERCENTAGES OF REGISTRANTS' SIGNATURES NEEDED ON NOMINATING PETITIONS

	(A) REPUBLICANS			(B) DEMOCRAT			(C) D C STATEHOOD			INDEPENDENT		(D) TOTAL	
	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(3)	(1)	(2)	(1)	(3)
Ward 1	3,384	10.68%	7.4%	23,532	74.32%	1.06%	225	0.71%	111%	4,220	13.32%	31,663	1.58%
Ward 2	4,482	14.13%	5.6%	21,996	69.38%	1.14%	205	0.64%	122%	4,961	15.64%	31,703	1.58%
Ward 3	14,300	30.31%	1.75%	23,966	50.81%	1.04%	142	0.30%	176%	8,716	18.48%	47,164	1.06%
Ward 4	2,677	7.25%	9.35%	30,804	83.52%	0.81%	125	0.33%	200%	3,225	8.74%	36,882	1.35%
Ward 5	1,875	5.96%	13.3%	27,364	87.08%	0.91%	93	0.29%	269%	2,050	6.52%	31,422	1.59%
Ward 6	1,961	6.91%	12.7%	23,840	84.01%	1.05%	171	0.60%	147%	2,361	8.32%	28,375	1.76%
Ward 7	1,731	5.66%	14.4%	26,666	87.29%	0.94%	71	0.23%	351%	2,027	6.63%	30,548	1.64%
Ward 8	979	4.49%	25.5%	19,044	87.40%	1.31%	97	0.44%	259%	1,628	7.47%	21,788	2.29%
City-wide	31,389	12.09%	(314)*	197,212	75.98%	(1,972)*	1,129	0.43%	(12)*	29,188	11.24%	259,545	(3,000)*

(1) Number of registered voters (2) % of registered voters of the whole (3) % effort needed to satisify either 250 or 500 signature requirement * Number of signatures needed for at-large candidates. Data on (1) and (2) supplied by DC Board of Elections as of May 23, 1974

Range of effort for DEM 0.81% to 1.31% of registered DEM voters to get 250 signatures
REPB 1.75% to 25.5% of registered REPB voters to get 250 signatures
DCSTP 111% to 351% of registered DCSTP voters to get 250 signatures
INDEP 1.06% to 2.29% of all registered voters to get 500 signatures

SUPREME COURT, U. S.

JAN 14 1975

MICHAEL RODAK, JR., CLERK

BRIEF FOR RESPONDENT IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM 1974

No. 74-560

ARMANDO RENDON
and
CARLEEN JOYCE, *Petitioners,*

v.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS, *Respondent.*

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

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INDEX

Subject Index	Page
Question Presented	1
Preliminary Statement	2
Reasons Why the Writ should be Denied	
Petitioners have failed to present any substantial federal question warranting review by this Court	2
Conclusion	7

Cases Cited

American Party of Texas v. *White* (1974), 415 U. S. 767	5
Jenness v. *Fortson* (1971), 403 U. S. 431	3, 4, 5, 6
Rosario v. *Rockefeller* (1973), 410 U. S. 752	6
Storer v. *Brown* (1974), 415 U. S. 724	2, 5
Williams v. *Rhodes* (1968), 393 U. S. 23	5

United States Code Cited

Title 28, Section 1257 (1970)	2

District of Columbia Code, 1973, Cited

Section 1-1108(h)(2) (Supp. I, 1974)	4
Section 1-1108(i)(1) (Supp. I, 1974)	4
Section 1-1108(i)(2) (Supp. I, 1974)	1, 3, 4, 6
Section 1-1108(j)(1) (Supp. I, 1974)	6
Section 11-702	2

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On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTION PRESENTED

Whether that portion of an Act of Congress, codified as D. C. Code, 1973, § 1-1108(i)(2) (Supp. I, 1974), relating to the District of Columbia, which requires that, in order for a candidate to be placed on a party primary ballot for the office of member of the District of Columbia Council from a ward, the candidate must obtain on a nominating petition the signatures of not less than 250 registered members of that party residing in the ward, is unconstitutional as applied to petitioners.

PRELIMINARY STATEMENT

This case arises from a final judgment of the District of Columbia Court of Appeals, the highest court of the District of Columbia. Final judgments and decrees of the District of Columbia Court of Appeals are reviewable by this Court pursuant to 28 U. S. C. § 1257 (1970). See D. C. Code, 1973, § 11-702.

Petitioners seek review of the order of the District of Columbia Court of Appeals upholding respondent's rejection of petitioners' nominating petitions for failure to have the requisite number of signatures. Respondent is not in disagreement with the statistics concerning registration of various political parties, including the D. C. Statehood Party, as presented in the petition.

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioners have failed to present any substantial federal question warranting review by this Court.

Contrary to the assertions of the petitioners, the ruling below was consistent with previous rulings of this Court. This is not a case which raises a question as to whether the total pattern of the District of Columbia's election laws denies petitioners' constitutionally protected rights, but rather whether a single requirement, relating to the minimum number of petition signatures required in order to be a candidate in a party primary election, unduly burdens petitioners' First Amendment rights. As the Court recently stated in *Storer* v. *Brown*, 415 U. S. 724, 737 (1974):

> "* * * Although *Williams* v. *Rhodes*, 393 U. S., at 34, spoke in terms of assessing the 'totality' of the election laws as they affected constitutional rights, if a candidate is absolutely and validly barred from the ballot by one provision of the laws, he cannot challenge other provisions as ap-

> plied to other candidates. The concept of 'totality' is applicable only in the sense that a number of facially valid provisions of election laws may operate in tandem to produce impermissible barriers to constitutional rights. * * * "

In this light, the particular challenged section must be examined to determine whether its application alone is constitutionally permissible. D. C. Code, 1973, § 1-1108(i)(2) (Supp. I, 1974), provides:

> "Each individual in a primary election for candidate for the office of member of the Council (other than the chairman and at-large members) shall be nominated for such office by a petition (A) filed with the Board not later than sixty days before the date of such primary election, and (B) signed by at least two hundred and fifty persons in the ward from which such individual seeks election who are duly registered in such ward under section 1-1107, and who are of the same political party as the nominee."

It is beyond question that the legislature of a jurisdiction, in the case of the District of Columbia the United States Congress, may make reasonable regulations governing access to the ballot and listing by party affiliation. As the Court stated in *Jenness* v. *Fortson*, 403 U. S. 431, 442 (1971):

> "There is surely an important state interest in requiring some preliminary showing of a significant modicum of support before printing the name of a political organization's candidate on the ballot—the interest, if no other, in avoiding confusion, deception, and even frustration of the democratic process at the general election. * * * "

For the District of Columbia, the Congress has legislated two types of tests of support for City Council candidates seeking ballot position via nomination by those parties qualified to choose candidates through primary elections. These different tests reflect the fact that some officials are elected citywide while other officials are elected from wards. For candidates seeking citywide offices, the number of petition signatures required is one percent of the voters registered as members of the party involved or 2000, whichever is less. For candidates seeking to represent one of the eight wards of the city, the test is a fixed minimum number of signatures. D. C. Code, 1973, § 1-1108 (i)(1) and (2) (Supp. I, 1974).

Before a political party is entitled to nominate candidates through a primary election, a candidate of the party must have drawn at least 7500 votes in the next preceding election. D. C. Code, 1973, § 1-1108(h)(2) (Supp. I, 1974). Since the 7500 votes need not be proportionately drawn from each ward of the city, a party may be able to garner sufficient votes to qualify to conduct a primary election, yet have no substantial support in one or more individual wards. Congress, in its wisdom, therefore required that a ward candidate, seeking a place on his party's primary ballot, must secure on a nominating petition the signatures of at least 250 party members residing in the ward. D. C. Code, 1973, § 1-1108(i)(2) (Supp. I, 1974). Plainly, Congress determined such requirement to be necessary and reasonable to insure that candidates running for ward office preliminarily demonstrate a significant modicum of party support in their wards, and further that candidates not representative of a party are not deceptively labeled as party candidates. *Jenness* v. *Fortson, supra,* makes clear that such a minimal preliminary showing of support legitimately furthers the important interests of avoiding "confusion, deception, and even frustration of the democratic process." 403 U. S. at 442.

Petitioners contend, however, that the 250 signature requirement is unduly burdensome because it requires a number of signatures which, when expressed as a percentage of the available pool of registered D. C. Statehood Party members, is in excess of the maximum percentages permitted by this Court. The cases relied upon by petitioners, however—*Storer* v. *Brown, supra; American Party of Texas* v. *White,* 415 U. S. 767 (1974); *Jenness* v. *Fortson, supra;* and *Williams* v. *Rhodes,* 393 U. S. 23 (1968)—all dealt with signature requirements determined by percentages of the votes cast in the preceding election or percentages of total registered voters, not with percentages of party membership. More importantly, petitioners cannot, as they attempt to do, characterize the issue as a percentage issue. The statutory provision applicable to them does not apply a percentage test, but a fixed, minimum number test. In *American Party of Texas* v. *White, supra,* the Court dealt with a 500 signature minimum limit and stated that the argument that such a requirement "is unduly burdensome approaches the frivolous." 415 U. S. at 789. The fixed, minimum number test is burdensome to petitioners only because of the extremely low number of voters registered as members of their party. Although the D. C. Statehood Party has been fielding candidates since March 1971, when the citizens of the District of Columbia first voted to send a non-voting Delegate to the House of Representatives, nevertheless, as of October 6, 1974, the D. C. Statehood Party has been able to persuade only 1515 voters to register as members of the party, out of a total of more than 272,000 registered voters in the District of Columbia. Plainly, the remedy to petitioners' problem lies in their own hands, namely, to organize and work to increase their party's registration rolls. As the Court observed in *American Party of Texas* v. *White, supra,* 415 U. S. at 787: "Hard work and sacrifice by dedicated volunteers are the lifeblood of any political organization."

In sum, petitioners cannot rely on their party's lack of effort or lack of success in recruiting new party registrants to demonstrate that the modest 250 signature requirement establishes a constitutionally impermissible barrier between them and ballot status under their party's banner. The 250 signature requirement expressed in D. C. Code, 1973, § 1-1108(i)(2) (Supp. I, 1974), is tied to the "particularized legitimate purpose" of requiring candidates of qualified parties to make "some preliminary showing of a significant modicum of [party] support." *Rosario* v. *Rockefeller,* 410 U. S. 752, 762 (1973); *Jenness* v. *Fortson, supra,* 403 U. S. at 442. The purpose being legitimate, the statutory provision must be sustained.

Finally, it is important to note that even if petitioners' efforts to build up their party's registration rolls do not meet with sufficient success to enable them to obtain ward ballot status under the D. C. Statehood Party banner, nevertheless petitioners are not precluded from obtaining ballot status. Under District law, petitioners can change their party registration to independent and obtain a place on the general election ballot by filing nominating petitions containing signatures of 500 registered voters residing in the wards from which they seek election. D. C. Code, 1973, § 1-1108(j)(1) (Supp. I, 1974). As independent candidates, petitioners would have a very substantial pool of possible petition signers. Any registered voter residing in the ward an independent candidate seeks to represent may sign such candidate's nominating petition regardless of the signer's party registration and regardless of whether the signer has signed any other nominating petition. Moreover, it is not disputed that petitioners, even while running as independents, can nevertheless espouse the political goals of the D. C. Statehood Party and can be publicly endorsed by that party. Thus, petitioners' assertion that the District's election laws deprive them of their First Amendment free speech and assembly rights is wholly insubstantial.

CONCLUSION

Because petitioners have presented no question of substance calling for the exercise of the Court's certiorari jurisdiction, it is respectfully submitted that the petition for writ of certiorari to the District of Columbia Court of Appeals should be denied.

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